

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

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L.C. GILLS, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 1:19-cv-01076-STA-jay
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

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**ORDER DISMISSING § 2255 PETITION,  
DENYING CERTIFICATE OF APPEALABILITY,  
AND  
DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS***

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Petitioner L.C. Gills, Jr., filed a *pro se* motion to vacate, set aside, or correct his sentence (the “Petition”), pursuant to 28 U.S.C. § 2255. (ECF No. 1.) On July 28, 2022, the Court ordered Gills to show cause within fourteen days why the Petition and the case should not be dismissed for his failure to keep the Court apprised of his whereabouts.<sup>1</sup> (ECF No. 13.) The Clerk was directed to update the docket with the address appearing on the felony offender website and to mail the order and other recently-filed documents to Petitioner at that address. Although warned that failure to comply with the order would result in dismissal of the Petition and the case under Federal Rule

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<sup>1</sup> On July 6, 2022, the Court directed Respondent United States of America to submit a supplemental affidavit in support of its answer to the Petition. (ECF No. 10.) A copy of the order was mailed to Petitioner at the address recorded on the docket. On July 28, 2022, the order was returned to the Clerk as undeliverable. (ECF No. 12.)

of Civil Procedure 41(b), Petitioner did not file a response and the time for doing so has passed. The Petition and the case are therefore **DISMISSED** for Gills's failure to comply with the Court's order and for lack of prosecution.

### **APPEAL ISSUES**

A § 2255 petitioner may not proceed on appeal unless a district or circuit judge issues a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1). A COA may issue only if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2)-(3). A substantial showing is made when the petitioner demonstrates that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). "If the petition was denied on procedural grounds, the petitioner must show, 'at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" *Dufresne v. Palmer*, 876 F.3d 248, 252-53 (6th Cir. 2017) (per curiam) (quoting *Slack*, 529 U.S. at 484).

In this case, reasonable jurists would not debate the correctness of the Court's decision to dismiss the Petition. Because any appeal by Petitioner does not deserve attention, the Court **DENIES** a certificate of appealability.

Pursuant to Federal Rule of Appellate Procedure 24(a), a party seeking pauper status on appeal must first file a motion in the district court, along with a supporting affidavit. Fed. R. App. P. 24(a). However, Rule 24(a) also provides that if the district court certifies that an appeal would

not be taken in good faith, the prisoner must file his motion to proceed *in forma pauperis* in the appellate court. *Id.*

In this case, for the same reason it denies a COA, the Court **CERTIFIES**, pursuant to Rule 24(a), that any appeal in this matter would not be taken in good faith. Leave to appeal *in forma pauperis* is therefore **DENIED**.<sup>2</sup>

**IT IS SO ORDERED.**

**s/ S. Thomas Anderson**  
S. THOMAS ANDERSON  
CHIEF UNITED STATES DISTRICT JUDGE

Date: August 15, 2022

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<sup>2</sup> If Petitioner files a notice of appeal, he must also pay the full \$505.00 appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals within thirty days.